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No.

In the
Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

ROBERT S. LIDSTER,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether *Indianapolis v. Edmond*, 531 U.S. 32 (2000), prohibits police officers from conducting a checkpoint organized to investigate a prior offense, at which checkpoint law enforcement officers briefly stopped all oncoming motorists to hand out flyers about—and look for witnesses to—the offense, where the checkpoint was conducted exactly one week after—and at approximately the same time of day as—the offense, and where the checkpoint otherwise met the reasonableness standard articulated in *Brown v. Texas*, 443 U.S. 47 (1979).

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION 1

STATEMENT OF THE CASE 2

REASON FOR GRANTING THE WRIT:

Certiorari Should Be Granted Because The Supreme Court of Illinois Misconstrued *Indianapolis v. Edmond*, 531 U.S. 32 (2000), As Creating A *Per Se* Rule That Checkpoints For Informational Purposes—To Gather Information About A Known Crime—Are Unconstitutional, Thereby Precluding Consideration In Those Cases Of The Balancing Test Of *Brown v. Texas*, 443 U.S. 47 (1979), Normally Applied In Checkpoint Cases. 4

CONCLUSION 13

APPENDIX ..... *infra*

TABLE OF AUTHORITIES

United States Supreme Court Cases PAGE(S)

Brown v. Texas,
443 U.S. 47 (1979) ..... *passim*

Delaware v. Prouse,
440 U.S. 648 (1979) 7

Indianapolis v. Edmond,
531 U.S. 32 (2000) ..... *passim*

Michigan Department of State Police v. Sitz,
496 U.S. 444 (1990) 4, 5, 10, 11

United States v. Martinez-Fuerte,
428 U.S. 543 (1976) 4, 5, 12

Other Cases

Burns v. Commonwealth,
261 Va. 307, 541 S.E.2d 872 (2001) 8, 9, 11

People v. Lidster,
___ Ill.2d ___, 2002 WL 31341339 (2002) ... 1, 3, 7, 11

People v. Lidster,
319 Ill.App.3d 825, 747
N.E.2d 419 (2nd Dist. 2001) 1, 3

PETITION FOR WRIT OF CERTIORARI

Petitioner, the State of Illinois, respectfully requests that this Court issue a writ of *certiorari* to the Supreme Court of Illinois to review that court's judgment and opinion entered on October 18, 2002.

OPINIONS BELOW

The Supreme Court of Illinois, on October 18, 2002, issued its opinion in this case, *People v. Lidster*, ___ Ill.2d ___, 2002 WL 31341339 (2002). This decision is reprinted in the appendix to this petition. The March 30, 2001, order of the Illinois Appellate Court is also reprinted in the appendix to this petition. *People v. Lidster*, 319 Ill.App.3d 825, 747 N.E.2d 419 (2nd Dist. 2001).

JURISDICTION

The Supreme Court of Illinois entered its opinion on October 18, 2002. The Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257 (a), since, in the proceedings in the state courts of Illinois, Respondent asserted an alleged violation of his rights arising under the United States Constitution.

STATEMENT OF THE CASE

On August 30, 1997, the Lombard, Illinois police department set up a checkpoint directed at solving a fatal hit-and-run accident which occurred exactly one week earlier at the same location and at approximately the same time of day. The time and place of the checkpoint were narrowly tailored in an attempt to find someone leaving a regular shift at work near the scene of the hit-and-run who may have seen something valuable to the investigation of that offense.

After initially being stopped at the checkpoint, Respondent almost hit a checkpoint officer with his car—and after exhibiting other signs of impaired driving—Respondent was arrested and charged with driving under the influence of alcohol. Arguing that he was seized without individualized suspicion, in violation of the Fourth Amendment to the United States Constitution, Respondent moved to quash his arrest and suppress the evidence of his offense. At the hearing on Respondent's motion to quash and suppress, Detective Ray Vasil testified that the checkpoint was organized by Lieutenant Glennon, third in command at the Lombard police department, and that its primary purpose was to distribute flyers to the stopped motorists, alerting them to the hit-and-run and to the need to come forward with any relevant information. The checkpoint was operated in a non-discretionary manner; the duration of the stop was short; and there was no crime-detection purpose sought to be achieved by the checkpoint. All east-bound motorists were stopped on average from 10 to 15 seconds and were not asked for their names, their drivers' licenses, or their insurance information; they were not even checked for seat belt violations. Although the checkpoint itself may not have been publicized, the fatal hit-and-run, which was the basis for the checkpoint, had been well publicized. Additionally, the checkpoint was operated in an apparently official nature, i.e., there were between a half dozen and a dozen police and emergency vehicles with oscillating lights

at the checkpoint, and Detective Vasil wore an orange reflective police vest and held an orange traffic cone.

After his motion was denied and after his subsequent bench trial, Respondent was found guilty of driving under the influence of alcohol and sentenced to one year of conditional discharge. He was also ordered to complete counseling, complete 14 days in the Sheriff's Work Alternative Program, and pay a $200.00 fine.

The Appellate Court of Illinois, Second District, in reversing Respondent's conviction, found that the instant case did not comply with the constitutional standards set forth in *Indianapolis v. Edmond*, 531 U.S. 32 (2000). *People v. Lidster*, 319 Ill.App.3d 825, 747 N.E.2d 419 (2nd Dist. 2001) (App. at 28).[1]

On October 18, 2002, the Supreme Court of Illinois affirmed the appellate court's judgment, reasoning that the primary purpose of the instant checkpoint was to seek evidence of ordinary criminal wrongdoing, and that such a purpose would not be sufficient to suspend the usual requirement of individualized suspicion, under *Edmond*. *People v. Lidster*, ___ Ill.2d ___, 2002 WL 31341339 (2002) (App. at 10).

Petitioner, the State of Illinois, now seeks a writ of *certiorari* from this Court to review the judgment and opinion of the Supreme Court of Illinois.

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[1] "App." refers to the Appendix attached to this petition.

REASON FOR GRANTING THE WRIT

Certiorari Should Be Granted Because The Illinois Supreme Court Misconstrued *Indianapolis v. Edmond*, 531 U.S. 32 (2000), As Creating A *Per Se* Rule That Checkpoints For Informational Purposes—To Gather Information About A Known Crime—Are Unconstitutional, Thereby Precluding Consideration In Those Cases Of The Balancing Test Of *Brown v. Texas*, 443 U.S. 47 (1979), Normally Applied In Checkpoint Cases.

The Supreme Court of Illinois misconstrued this Court's holding in *Indianapolis v. Edmond*, 531 U.S. 32 (2000), to create a *per se* rule that checkpoints organized to obtain information about a specific, known crime are constitutionally impermissible. In so doing, the court improperly dispensed with the balancing test of *Brown v. Texas*, 443 U.S. 47 (1979), normally applied to determine the reasonableness of checkpoints. Not only did the Supreme Court of Illinois decide an important federal question in a way that conflicts with this Court's jurisprudence, its misconstruction necessarily divests law enforcement officers of their timeless and critical functions of gathering information and evidence relating to particular crimes known to them.

Checkpoint stops are "seizures," implicating the Fourth Amendment's requirement of reasonableness. *Edmond*, 531 U.S. at 37, 40; *United States v. Martinez-Fuerte*, 428 U.S. 543, 556 (1976); *Michigan Department of State Police v. Sitz*, 496 U.S. 444, 450 (1990). Although a seizure is ordinarily unreasonable in the absence of individualized suspicion, "the Fourth Amendment imposes no irreducible requirement of such suspicion," and a reasonable seizure can, in appropriate circumstances, exist without it. *Martinez-Fuerte*, 428 U.S. at 561. Indeed, this Court, in *Edmond*, identified certain circumstances in which checkpoint seizures would be reasonable in the absence of individualized suspicion, e.g., checkpoints designed to intercept illegal

aliens (*See Edmond*, 531 U.S. at 37, *citing United States v. Martinez-Fuerte*, 428 U.S. 543) and to remove drunk drivers from the road. *See Edmond*, 531 U.S. at 37, *citing Michigan Department of State Police v. Sitz*, 496 U.S. 444. *Edmond* also countenanced the suggestion, in *Delaware v. Prouse*, 440 U.S. 648 (1979), that a roadblock to check for licensure would be constitutional. *Edmond*, 531 U.S. at 38. *Edmond* did, however, declare unconstitutional checkpoints whose primary purpose was the "ordinary enterprise of investigating crimes" or, said another way, the "general interest in crime control." *Edmond*, 531 U.S. at 41-44.

A. The Instant Informational Checkpoint Does Not Fall Within *Edmond*'s Proscription.

In *Edmond*, this Court considered the constitutionality of a checkpoint program whose primary purpose was the discovery and interdiction of illegal narcotics. *Indianapolis v. Edmond*, 531 U.S. 32 (2000). At these roadblocks, an officer asked the driver for a license and registration, looked for signs of impairment in the driver, and conducted an open-view examination of the vehicle—all while a narcotics-detection dog walked around the outside of each stopped vehicle. *Edmond*, 531 U.S. at 35. On average, each stop that did not give rise to further inquiry lasted up to five minutes. *Id.*

In contrast, at the 10- to 15-second stops involved in the instant checkpoint, the drivers were not asked for their names, their drivers' licenses, their insurance information, and they were not even checked for seatbelt violations. (R. 170).[2] The officers simply handed out flyers about the fatal

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[2] "(R.___)" designates the record transcript from the state court proceedings in *People v. Lidster*, Case No. 97 DT 3462, before the

(continued...)

hit-and-run and asked the stopped motorists whether they were in the area the previous week and whether they saw anything. (R. 159-160, 163). The checkpoint's primary (and, in fact, only) purpose was to seek information about an existing crime, not to attempt to make new defendants of those stopped at the checkpoint. Thus, the nature, purpose, and scope of the instant checkpoint were completely different than those involved in *Edmond*.

Furthermore, *Edmond* itself offered a clear distinction between the checkpoints in that case and others, such as the one involved in the instant case. *Edmond*, noting that this Court has "never approved a checkpoint program whose primary purpose was to *detect* evidence of ordinary criminal wrongdoing," held unconstitutional the Indianapolis checkpoints because their primary purpose was "to *uncover* evidence of ordinary criminal wrongdoing." *Edmond*, 531 U.S. at 41-42. (Emphasis added). Petitioner initially asserts that this Court's chosen words of "detect" and "uncover" signify the activity of discovering unknown crimes, rather than seeking information on a particular crime known to the police.

Additionally, in explaining its holding, this Court stated:

> We decline to suspend the usual requirement of individualized suspicion where police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes. *We cannot sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime.*

Edmond, 531 U.S. at 44. (Emphasis added).

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[2] (...continued)
Circuit Court of DuPage County for the Eighteenth Judicial Circuit of Illinois.

In finding the instant checkpoint unconstitutional—and consequently all informational checkpoints unconstitutional—the Illinois Supreme Court erroneously focused on the first sentence quoted above to the exclusion of the second (italicized) sentence which, modifying the first, plainly proscribes checkpoints for the purpose of exposing to the police unknown crimes committed by the seized motorists themselves.

As noted above, in discussing prior constitutional checkpoints, this Court, in *Edmond*, countenanced the suggestion in *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed. 2d 660 (1979), that a roadblock organized to check licensure would be lawful. *Edmond*, 531 U.S. at 39. In so doing, the *Edmond* Court noted that it considered the "purposes of such a hypothetical roadblock to be distinct from a general purpose of investigating crime." *Id.*

Further, the Supreme Court of Illinois misinterpreted the concern voiced by this Court in *Edmond*, specifically that:

> [w]ithout drawing the line at roadblocks designed primarily to serve the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life.

Edmond, 531 U.S. at 42. Warning against the threat perceived to have been articulated in *Edmond*, the Supreme Court of Illinois provided a host of crime statistics in the State to demonstrate the ease and frequency with which checkpoints could be formed. *People v. Lidster*, ___ Ill.2d ___, 2002 WL 31341339 (2002) (App. at 8). The problem with the court's analysis is that *Edmond* was not troubled by the threat of ubiquitous checkpoints alone—but, rather, by the threat of ubiquitous checkpoints directed primarily at crime control. Current law already allows for the possibility of ubiquitous checkpoints to detect impaired drivers or to check drivers' licenses and registrations—police de-

partments need not even wait until a crime is committed before organizing such checkpoints. Furthermore, the court's slippery slope argument is defused by the fact that the number of checkpoints assembled would necessarily be lessened by the limited amount of resources and manpower available to enforcement authorities; and once it is determined that a given checkpoint would be a good use of such resources and manpower, it still would have to meet the reasonableness test outlined by this court in *Brown v. Texas*, 443 U.S. 47 (1979).

As further evidence that the Illinois Supreme Court's *per se* rule against informational checkpoints was not intended by *Edmond*, this Court, in *Edmond*, stated that it does not "limit the purposes that may justify a checkpoint program to any rigid set of categories," (*Edmond*, 531 U.S. at 44), "nor does our opinion speak to other intrusions aimed primarily at purposes beyond the general interest in crime control." *Edmond*, 531 U.S. at 48. As the primary purpose of the instant checkpoint was to obtain information about a known crime (rather than to conduct a witch-hunt or dragnet search for unknown crimes) it did not involve "the general interest in crime control," as contemplated under *Edmond*.

In the only other case to address the constitutionality of a crime-specific informational checkpoint in the aftermath of *Edmond*, *Burns v. Commonwealth*, 261 Va. 307, 541 S.E. 2d 872 (2001), the Virginia Supreme Court agreed that *Edmond* does not compel a *per se* rule precluding such informational checkpoints. In *Burns*, much like in the instant case, the Shenandoah County Sheriff's Department decided to set up a roadblock because a brutal homicide had been recently committed in the area of the roadblock, and law enforcement officials did not know the identity of the perpetrator or whether the perpetrator was still in the area. *Burns*, 261 Va. at 322. "[T]he purpose of the roadblock

was to 'canvas drivers who were passing through the area, to see whether they had seen anything or heard anything' during the time period when the crime had probably been committed the previous day." *Id.* The checkpoint was set up the day after the murder, during the hours of 7:00 p.m. and 11:30 a.m., the time during which the murder was believed to have occurred. *Id.* As in the instant case, all vehicles were stopped and the motorists were asked " 'if they were through that section during those times, and if they were, [whether they saw] anything of a suspicious nature in or around [the victim's house].' " *Burns*, 261 Va. at 323.

The *Burns* court, in finding the checkpoint constitutional, specifically stated:

> The primary purpose of the roadblock that Sheriff Green established obviously was not related to policing the borders or ensuring road safety. Nor was its purpose simply to investigate ordinary criminal wrongdoing as was the checkpoint in *Edmond*. Instead, the roadblock in this case was specifically designed to investigate a particular murder that had recently occurred in the area where the roadblock was placed. When Sheriff Green decided to set up the roadblock, the perpetrator's identity and whereabouts remained unknown. Law enforcement officers were not stopping vehicles merely to discover evidence of crimes in general. Thus, we conclude that the roadblock in this case falls within the exigent circumstances recognized by the Supreme Court in *Edmond* and that it, therefore, did not contravene the Fourth Amendment.

Burns, 261 Va. at 323-24. Indeed, just as the *Burns* checkpoint falls outside of the category of discovering evidence of crimes in general, so too does the instant checkpoint. The Lombard police officers were not stopping vehicles to merely discover evidence of crimes in general, as were the officers in *Edmond*. Additionally, the instant checkpoint—

created to solve a fatal hit-and-run—involved a connection to highway safety that is even absent in *Burns*, as the hit-and-run driver remained at large and a possible threat to others in the area. That connection only removes the instant checkpoint farther from the category of checkpoints *Edmond* intended to proscribe.

B. The Reasonableness Of The Instant Informational Checkpoint Should Have Been Evaluated Under The Standard Set In *Brown v. Texas*, 443 U.S. 47 (1979), With Which It Would Have Complied.

As noted, a vehicle stop at a checkpoint effectuates a seizure under the Fourth Amendment. *Indianapolis v. Edmond*, 531 U.S. 32, 40 (2000). However, checkpoint stops without individualized suspicion do not automatically violate the Fourth Amendment. The Fourth Amendment only proscribes those seizures that are unreasonable. *Michigan Department of State Police v. Sitz*, 496 U.S. 444, 450 (1990). As a result, the constitutionality of a checkpoint necessarily depends on its reasonableness.

This Court's jurisprudence for determining a checkpoint's reasonableness involves balancing: (1) the State's interest served by the checkpoint; (2) the degree of intrusion (both objective and subjective) upon individual motorists who are stopped; and (3) the extent to which the checkpoint could reasonably be said to advance the State's interest. *Brown v. Texas*, 443 U.S. 47, 50-51 (1979); *Sitz*, 496 U.S. at 455. By misconstruing *Edmond* to create a *per se* rule that informational checkpoints are unconstitutional, the Illinois Supreme Court improperly precluded consideration, in the instant case, of the standard test, derived from *Brown*, to determine the reasonableness of checkpoints. The court's ruling further precludes consideration of the *Brown* reasonableness test for all subsequent informational checkpoints, as it has found them to be *per se* unconstitutional.

People v. Lidster, ___ Ill.2d ___, 2002 WL 31341339 (2002) (App. at 10).

In *Michigan Department of State Police v. Sitz*, 496 U.S. 444 (1990), this Court relied on *Brown* to find sobriety checkpoints constitutional. *Sitz*, 496 U.S. at 455. In so doing, the Court rejected the respondent's argument that the *Brown* balancing test "was not the proper method of analysis" (*Sitz*, 496 U.S. at 449), and that "there must be a showing of some special governmental need 'beyond the normal need' for criminal law enforcement before a balancing analysis is appropriate. . . ." *Sitz*, 496 U.S. at 450. As a result, the Supreme Court of Illinois should not have disregarded the balancing test developed by this Court in determining the reasonableness of the instant checkpoint and other such informational checkpoints.

Had the instant checkpoint been subjected to a *Brown* balancing analysis, it would have complied with constitutional standards. Certainly, a significant public interest existed in solving a fatal hit-and-run of a bicyclist, where the perpetrator was still at large, and where available information had been insufficient to solve the crime prior to that time. *See Burns v. Commonwealth*, 261 Va. 307, 322, 541 S.E.2d 872 (2001) ("the fact that a murder had occurred was a matter of grave public concern, and the roadblock advanced that concern by aiding in the investigation of the crime").

Further, the objective and subjective intrusion of the instant checkpoint were minimal. Each car was stopped for approximately 10 to 15 seconds (R. 170) while an officer handed out a flyer (R. 161) and asked the driver whether he was in the area at the time of the accident. (R. 163). The drivers were not asked for their names, drivers' licenses, or insurance information. (R. 170). Nor were they inspected for signs of impairment or their vehicles searched. They were not even checked for seat belt violations. (R. 170). As

a result, the objective intrusion of the checkpoint was slight. *See United States v. Martinez-Fuerte*, 428 U.S. 543, 558 (1976). The subjective intrusion upon each motorist was also minimal inasmuch as being stopped at a checkpoint usually generates appreciably less fear in a lawful traveler than being stopped by a roving patrol. *Martinez-Fuerte*, 428 U.S. at 559. Furthermore, at the instant checkpoint, any fear would have been minimized by the apparently official, non-discretionary, and safe operation of the checkpoint, shown by the presence of as many as a dozen police and emergency vehicles (R. 173), the wearing of orange police vests (R. 173), and the stopping of every eastbound vehicle. (R. 162).

Finally, the instant checkpoint was an effective means of advancing the State's interest. Common sense dictates that setting up a checkpoint exactly one week after the crime, at approximately the same time of day—in order to stop motorists who regularly travel that route at the end of their work shifts—will increase the likelihood of finding witnesses to the crime. Moreover, the checkpoint was narrowly tailored to accomplish that objective.

In sum, the Illinois Supreme Court's misconstruction of *Edmond* to create a *per se* rule that crime-specific informational checkpoints are unconstitutional—and its attendant disregard of the *Brown* balancing test—improperly prevents law enforcement officers from performing their historic, normal and necessary functions of trying to find witnesses to a known crime.

CONCLUSION

For the aforementioned reasons, Petitioner, the State of Illinois, respectfully requests that this Honorable Court grant *Certiorari* and reverse the decision of the Illinois Supreme Court.

Respectfully submitted,

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APPENDIX

[Filed October 18, 2002]

Docket No. 91522–Agenda 12–January 2002.

THE PEOPLE OF THE STATE OF ILLINOIS, Appellant, v. ROBERT S. LIDSTER, Appellee.

JUSTICE FREEMAN delivered the opinion of the court:

Following a bench trial, the circuit court of Du Page County convicted defendant of driving under the influence of alcohol (625 ILCS 5/11–501(a)(2) (West 1996)). The appellate court found that the roadblock where the police arrested defendant did not comply with the constitutional standards set forth in *City of Indianapolis v. Edmond*, 531 U.S. 32, 148 L. Ed. 2d 333, 121 S. Ct. 447 (2000). Accordingly, the appellate court reversed defendant's conviction. 319 Ill. App. 3d 825. We granted the State's petition for leave to appeal (177 Ill.2d R. 315(a)), and allowed the Illinois Association of Chiefs of Police to file an *amicus curiae* brief in support of the State. For the reasons that follow, we affirm the judgment of the appellate court.

BACKGROUND

On August 30, 1997, the Lombard police department set up a roadblock on North Avenue in Lombard, Illinois. A police officer stopped defendant at the roadblock and directed him to a side street where another police officer had defendant perform several field-sobriety tests. Defendant failed a number of the tests and was taken into custody.

Defendant was subsequently charged with the offense of driving under the influence of alcohol. He filed a motion to quash his arrest and suppress evidence. At the hearing on the motion, Detective Ray Vasil testified that Lieutenant Glennon, third in command at the Lombard police department, authorized the roadblock. The purpose of the road-

block was to obtain information from motorists regarding a hit-and-run accident that took place one week earlier, at the same location, and at the same time of day. In particular, the police wanted information regarding a Ford Bronco or full-sized pickup truck implicated in the accident.

The Lombard police department has a general order regarding the use of roadblocks. The order, however, does not contain guidelines regarding the use of roadblocks to obtain information from crime witnesses. The roadblock at issue was not videotaped. Further, the police did not publicize the roadblock.

Between 6 and 12 police vehicles participated in the roadblock. Detective Vasil wore an orange reflective vest with the word "Police" on it, and stood between the eastbound lanes of North Avenue, 15 feet from the roadblock. A line of cars formed at the roadblock. As each vehicle pulled up to Detective Vasil, he handed a flyer to the driver of the vehicle requesting information regarding the accident. Because defendant's Mazda minivan almost hit him, Detective Vasil requested defendant's driver's license and insurance card. Detective Vasil smelled alcohol on defendant's breath and noticed that defendant's speech was slurred. Detective Vasil directed defendant to a side street where Detective Roy Newton had defendant perform several sobriety tests.

The trial court denied defendant's motion.

At defendant's subsequent bench trial, Detective Newton testified that he was assigned to the corner of North Avenue and Craig. His duties were to ensure that drivers did not skirt the roadblock and to provide help to the officers in the event they experienced any problems with the vehicles or drivers stopped at the roadblock. The officers at the roadblock directed several cars, including defendant's vehicle, to Detective Newton's location. At Detective Newton's request, defendant produced a driver's license and insurance information. Detective Newton then had defendant

perform several sobriety tests and placed defendant under arrest.

The court found defendant guilty of driving under the influence of alcohol. The court sentenced defendant to one year of conditional discharge and required that defendant participate in counseling, complete 14 days in the "Sheriff's Work Alternative Program," and pay a fine of $200.

ANALYSIS

As noted above, the appellate court relied on *Edmond*, 531 U.S. 32, 148 L. Ed. 2d 333, 121 S. Ct. 447, in finding the roadblock at issue invalid. In *Edmond*, the United States Supreme Court invalidated checkpoints set up by the police on Indianapolis roads in an effort to interdict unlawful drugs. Initially, the Court observed:

> "The Fourth Amendment requires that searches and seizures be reasonable. A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing. [Citation.] While such suspicion is not an 'irreducible' component of reasonableness [citation], we have recognized only limited circumstances in which the usual rule does not apply. For example, we have upheld certain regimes of suspicionless searches where the program was designed to serve 'special needs, beyond the normal need for law enforcement.' [Citations.]
> * * *
>
> We have also upheld brief, suspicionless seizures of motorists at a fixed Border Patrol checkpoint designed to intercept illegal aliens, *Martinez-Fuerte*, [428 U.S. 543, 49 L. Ed. 2d 1116, 96 S. Ct. 3074 (1976)], and at a sobriety checkpoint aimed at removing drunk drivers from the road, *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444[, 110 L. Ed. 2d 412, 110 S. Ct. 2481]

(1990)." *Edmond*, 531 U.S. at 37, 148 L. Ed. 2d at 340-41, 121 S. Ct. at 451-52.

The *Edmond* Court then reviewed its decisions in *Martinez-Fuerte* and *Sitz*, detailing the need for the checkpoints at issue and the important governmental interests they served. The Court observed:

> "We have never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing. Rather, our checkpoint cases have recognized only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion. We suggested in *Prouse* that we would not credit the 'general interest in crime control' as justification for a regime of suspicionless stops. [*Delaware v. Prouse*, 440 U.S. 648, 659 n. 18, 59 L. Ed. 2d 660, 671 n. 18, 99 S. Ct. 1391, 1399 n. 18 (1979).] Consistent with this suggestion, each of the checkpoint programs that we have approved was designed primarily to serve purposes closely related to the problems of policing the border or the necessity of ensuring roadway safety." *Edmond*, 531 U.S. at 41, 148 L. Ed. 2d at 343, 121 S. Ct. at 454.

The *Edmond* Court firmly rejected the suggestion that the Indianapolis checkpoints could be upheld pursuant to *Martinez- Fuerte* and *Sitz:*

> "Petitioners propose several ways in which the narcotics-detection purpose of the instant checkpoint program may instead resemble the primary purposes of the checkpoints in *Sitz* and *Martinez-Fuerte*. Petitioners state that the checkpoints in those cases had the same ultimate purpose of arresting those suspected of committing crimes. * * * Securing the border and apprehending drunk drivers are, of course, law enforcement activities, and law enforcement officers employ arrests and criminal prosecutions in pursuit of these

> goals. [Citations.] If we were to rest the case at this high level of generality, there would be little check on the ability of the authorities to construct roadblocks for almost any conceivable law enforcement purpose. Without drawing the line at roadblocks designed primarily to serve the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life." *Edmond*, 531 U.S. at 42, 148 L. Ed. 2d at 343-44, 121 S. Ct. at 454.

The *Edmond* Court concluded that the Indianapolis checkpoints were invalid, stating:

> "The primary purpose of the Indianapolis narcotics checkpoints is in the end to advance 'the general interest in crime control,' [citation]. We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes. We cannot sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime." *Edmond*, 531 U.S. at 44, 148 L. Ed. 2d at 345, 121 S. Ct. at 455.

See also *Ferguson v. City of Charleston*, 532 U.S. 67, 81, 149 L. Ed. 2d 205, 218-19, 121 S. Ct. 1281, 1290 (2001) (in invalidating a program at a state hospital whereby urine samples from pregnant women were tested for drugs and the results communicated to the police, the Court stated: "Respondents argue in essence that their ultimate purpose–namely, protecting the health of both mother and child–is a beneficent one. In *Chandler* [*v. Miller*, 520 U.S. 305, 137 L. Ed. 2d 513, 117 S. Ct. 1295 (1997)], however, we did not simply accept the State's invocation of a 'special need.' Instead, we carried out a 'close review' of the scheme at issue before concluding that the need in question was not

'special,' as that term has been defined in our cases. [Citation.] In this case, a review of the M-7 policy plainly reveals that the purpose actually served by the [hospital] searches 'is ultimately indistinguishable from the general interest in crime control.' *Indianapolis v. Edmond,* 531 U.S. 32, 44 (2000)").

In the present case, the appellate court held the roadblock at issue invalid under *Edmond.* The appellate court noted "that the roadblock's ostensible purpose was to seek evidence of 'ordinary criminal wrongdoing.'" 319 Ill. App. 3d at 828. The court concluded "[t]his is the type of routine investigative work that the police must do every day and does not justify the extraordinary means chosen to further the investigation." 319 Ill. App. 3d at 828.

The State asserts that *Edmond* is distinguishable because the roadblock at issue had a specific purpose of assisting the authorities in solving a crime that had already been committed and was known to the police. Thus, police efforts were not directed at general crime control. Unlike in *Edmond,* the Lombard police department did not seek to interrogate and inspect motorists to ferret out evidence that the motorists themselves had committed crime that was as yet unknown to police. Defendant was only subjected to further investigation because he narrowly missed hitting an officer in the area where vehicles were stopped.

The State's interpretation of *Edmond* is incorrect. First, as the Court reaffirmed in *Edmond,* the general rule is that "a search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing." *Edmond,* 531 U.S. at 37, 148 L. Ed. 2d at 340, 121 S. Ct. at 451. The checkpoints upheld in *Martinez-Fuerte,* 428 U.S. 543, 49 L. Ed. 2d 1116, 96 S. Ct. 3074 (1976) (immigration checkpoints located near the Mexican border), and *Michigan Department of State Police v. Sitz,* 496 U.S. 444, 110 L. Ed. 2d 412, 110 S. Ct. 2481 (1990) (sobriety checkpoint), are "limited exceptions to the general rule." *Edmond,* 531 U.S. at 41, 148 L. Ed. 2d at 343, 121 S. Ct. at 454. Certainly the Lombard roadblock does not fall within the scope of the limited exceptions heretofore approved by the Supreme Court.

Second, the Court in *Edmond* was keenly aware that an exception for roadblocks "designed primarily to serve the general interest in crime control" would abrogate the general rule requiring individualized suspicion of wrongdoing. See 4 W. LaFave, Search & Seizure § 9.6 (3d ed. Supp. 2002). Accordingly, the Court drew a bright line that when the primary purpose of a roadblock is general crime control, the roadblock is unconstitutional. The Court explained:

> "Without drawing the line at roadblocks designed primarily to serve the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life." *Edmond,* 531 U.S. at 42, 148 L. Ed. 2d at 344, 121 S. Ct. at 454.

The Court declined "to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes." *Edmond,* 531 U.S. at 44, 148 L. Ed. 2d at 345, 121 S. Ct. at 455.

In the case at bar, the State ignores the concerns expressed by the Court in *Edmond.* In spite of the clear admonishment in *Edmond* against the use of roadblocks to advance "the general interest in crime control," the State requests that we allow a roadblock for precisely that purpose.

Third, the State finds a distinction between gathering information leading to the arrest and prosecution of a motorist as the perpetrator of a crime, and gathering information from a motorist leading to the identification of *another* motorist as the perpetrator of a crime. According to

the State, gathering information leading to the arrest and prosecution of a motorist as the perpetrator of a crime is a part of general crime control. However, the State maintains that gathering information from a motorist leading to the identification of *another* motorist as the perpetrator of a crime is *not* considered a part of general crime control. Taking the State's reasoning a step further, a police investigation tool such as canvassing a neighborhood to find identification witnesses to a crime is not considered to be a part of general crime control. In the State's view, crime control involves arresting the perpetrator directly; it does not involve gathering information leading to the arrest of the perpetrator. We must reject this contention. In investigating and solving any crime, police efforts are directed at general crime control. This holds true whether the police happen upon the perpetrator of the crime at the roadblock or obtain information from a roadblock detainee identifying the perpetrator of the crime.

Lastly, an exception for informational roadblocks has the potential to make roadblocks "a routine part of American life." *Edmond,* 531 U.S. at 42, 148 L. Ed. 2d at 344, 121 S. Ct. at 454. In 2000, 870 murders, 49,652 assaults, 25,168 robberies, 77,947 burglaries, 306,805 thefts, 55,222 motor vehicle thefts, and 2,899 arsons were known by police to have been committed in Illinois. J. Fitch, 2001 Illinois Statistical Abstract 764 (16th ed. 2001). Of those, 706 murders, 31,655 assaults, 21,691 robberies, 41,464 burglaries, 168,890 thefts, 45,083 motor vehicle thefts, and 1,525 arsons were known by police to have been committed in Cook County. J. Fitch, 2001 Illinois Statistical Abstract 764 (16th ed. 2001). In the City of Chicago, there were 627 murders, 26,660 assaults, 19,449 robberies, 28,401 burglaries, 105,728 thefts, 35,570 motor vehicle thefts and 1,106 arsons. J. Fitch, 2001 Illinois Statistical Abstract 766 (16th ed. 2001). Should the police have been allowed to set up roadblocks to obtain information from potential witnesses

for each murder? What of a robbery, an aggravated criminal sexual assault, an arson or any other serious crime? According to the State, for a period of at least a week after each crime, police could set up roadblocks with the specific purpose of making inquiries of persons who were possibly witnesses to a crime. The troubling specter then arises that the streets of Cook County, or at least the streets of Chicago, would be adorned with roadblocks, an outcome clearly unacceptable under *Edmond.*

Amicus suggests that exigent circumstances justified the use of the roadblock. *Amicus* asserts that police needed to act quickly to contact possible witnesses or else risk losing vital information. The Court in *Edmond* left open the possibility that an emergency may justify a law enforcement roadblock. The Court explained:

> "Of course, there are circumstances that may justify a law enforcement checkpoint where the primary purpose would otherwise, but for some emergency, relate to ordinary crime control. For example, as the Court of Appeals noted, the Fourth Amendment would almost certainly permit an appropriately tailored roadblock set up to thwart an imminent terrorist attack or to catch a dangerous criminal who is likely to flee by way of a particular route. [Citation.] The exigencies created by these scenarios are far removed from the circumstances under which authorities might simply stop cars as a matter of course to see if there just happens to be a felon leaving the jurisdiction. While we do not limit the purposes that may justify a checkpoint program to any rigid set of categories, we decline to approve a program whose primary purpose is ultimately indistinguishable from the general interest in crime control." *Edmond,* 531 U.S. at 44, 148 L. Ed. 2d at 345, 121 S. Ct. at 455.

In the present case, the hit-and-run accident happened a week before the roadblock. There was no indication that the

motorist involved posed any further danger to local residents or, indeed, that the motorist remained in the vicinity. There was also no indication that the motorist was driving recklessly or was driving under the influence of alcohol. While this court understands the efforts of the Lombard police department to obtain information leading to the identification of the motorist, the limited, exigent circumstances of the nature identified by the Supreme Court in *Edmond* are not present in the matter at bar. Absent such exigent circumstances, the fourth amendment's prohibition against suspicionless seizures should not give way to the normal needs of law enforcement, be they identified as crime control, criminal investigation or canvassing efforts to obtain information leading to the identification and apprehension of the perpetrator of a crime.

The State and *amicus* fail in their attempts to distinguish *Edmond*. *Edmond* clarifies that "[w]hen law enforcement authorities pursue primarily general crime control purposes at checkpoints such as here, * * * stops can only be justified by some quantum of individualized suspicion." *Edmond*, 531 U.S. at 47, 148 L. Ed. 2d at 347, 121 S. Ct. at 457.

CONCLUSION

The laws of this state require that a motorist remain at the scene of an accident. In the present case, the motorist left the scene of the accident. The police set up a roadblock to obtain information regarding the identity of the motorist. The goals of the police in doing so are laudable.

This court is sympathetic to the efforts of the police in identifying the motorist involved in the accident. Sympathy, however, does not justify the roadblock at issue. As the Supreme Court observed in *Almeida-Sanchez v. United States*, 413 U.S. 266, 37 L. Ed. 2d 596, 93 S. Ct. 2535 (1973):

"The needs of law enforcement stand in constant tension with the Constitution's protections of the individual against certain exercises of official power. It is precisely the predictability of these pressures that counsels a resolute loyalty to constitutional safeguards. It is well to recall the words of Mr. Justice Jackson, soon after his return from the Nuremberg Trials:

> 'These [fourth amendment rights], I protest, are not mere second-class rights but belong in the catalog of indispensable freedoms. Among deprivations of rights, none is so effective in cowing a population, crushing the spirit of the individual and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government.' *Brinegar v. United States*, 338 U.S. 160, 180, 93 L. Ed. 1879, 69 S. Ct. 1302 (Jackson, J., dissenting)." *Almeida-Sanchez*, 413 U.S. at 273-74, 37 L. Ed. 2d at 603, 93 S. Ct. at 2540.

The right of an individual to be free from unreasonable searches and seizures is an indispensable freedom, not a mere luxury. It cannot give way in the face of a temporary need for the police to obtain information regarding the identity of the motorist at issue. As the protector of the constitutional rights of all citizens of this state, this court is commanded to draw a "line at roadblocks designed primarily to serve the general interest in crime control." *Edmond*, 531 U.S. at 42, 148 L. Ed. 2d at 344, 121 S. Ct. at 454. Without such a line, the fourth amendment will do little to prevent intrusive searches and seizures from becoming a routine part of American life. *Edmond*, 531 U.S. at 42, 148 L. Ed. 2d at 344, 121 S. Ct. at 454.

The judgment of the appellate court is affirmed.

Affirmed.

JUSTICE THOMAS, dissenting:

The majority has misconstrued *City of Indianapolis v. Edmond,* 531 U.S. 32, 148 L. Ed. 2d 333, 121 S. Ct. 447 (2000), by reading it to prohibit the type of roadblock at issue here. *Edmond* is factually distinguishable, and its language does not condemn the strictly informational roadblock instituted by the Lombard police department in this case. Additionally, I believe that the majority erroneously creates a *per se* rule that roadblocks involving police canvassing for information about a specific, known crime are constitutionally impermissible. Consequently, the majority abrogates the balancing test of *Brown v. Texas,* 443 U.S. 47, 61 L. Ed. 2d 357, 99 S. Ct. 2637 (1979), which is normally applied in roadblock cases. For all of these reasons and as more fully explained below, I respectfully dissent.

I. *Edmond* Is Distinguishable and Is Not Determinative

In *Edmond,* the Court considered the constitutionality of an Indianapolis checkpoint program that had as its primary purpose the interdiction of illegal drugs. In contrast to the 10 to 15 second stops in the present case, which were conducted for the sole purpose of handing out an informational flyer, the total duration of the stops in *Edmond* lasted between two and five minutes. Moreover, unlike the roadblock here, drivers in *Edmond* were asked to produce a license and registration while an officer looked for signs of impairment. The officer also conducted an open-view examination of the vehicle from the outside. Meanwhile, a narcotics-detection dog was walked around the outside of the stopped vehicle. Thus, the nature, purpose, and scope of the roadblocks were completely different in the two cases.

In the course of discussing its prior roadblock seizure cases, the *Edmond* Court declared that it had never ap-

proved "a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing." *Edmond,* 531 U.S. at 38, 148 L. Ed. 2d at 341, 121 S. Ct. at 452. The Court noted that in *United States v. Martinez-Fuerte,* 428 U.S. 543, 49 L. Ed. 2d 1116, 96 S. Ct. 3074 (1976), it upheld a highway checkpoint established for the purposes of intercepting illegal aliens because of the significant interest in policing the nations borders (*Edmond,* 531 U.S. at 38, 121 S. Ct. at 452, 148 L. Ed. 2d at 341), and in *Michigan Department of State Police v. Sitz,* 496 U.S. 444, 110 L. Ed. 2d 412, 110 S. Ct. 2481 (1990), it upheld a police roadblock instituted to detect intoxicated drivers because of the gravity of the drunken driving problem and the obvious connection between highway safety and the law enforcement practice at issue (*Edmond,* 531 U.S. at 39, 148 L. Ed. 2d at 342, 121 S. Ct. at 453). The Court also discussed *Delaware v. Prouse,* 440 U.S. 648, 59 L. Ed. 2d 660, 99 S. Ct. 1391 (1979), which invalidated a discretionary, suspicionless stop of a single motorist to check his license and registration, noting that the officer's conduct in that case was unconstitutional primarily because of his exercise of discretion without standards promulgated by the police department. *Edmond,* 531 U.S. at 39, 148 L. Ed. 2d at 342, 121 S. Ct. at 453. The Court noted with approval the suggestion in *Prouse* that the questioning of all oncoming traffic at roadblock-type stops to ensure that only those qualified to operate a vehicle are permitted to do so would be a lawful means of serving the interest in highway safety, but it specifically pointed out that it considered the purpose of such a hypothetical roadblock "to be distinct from a general purpose of investigating crime." *Edmond,* 531 U.S. at 39, 148 L. Ed. 2d at 342, 121 S. Ct. at 453.

In concluding that a checkpoint designed primarily to catch drug offenders and interdict illegal narcotics violates the fourth amendment, the *Edmond* Court stated the following:

> "We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes. We cannot sanction stops *justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime.*" (Emphasis added.) *Edmond,* 531 U.S. at 44, 148 L. Ed. 2d at 345, 121 S. Ct. at 455.

In applying *Edmond* to the present case, the majority erroneously seizes upon language in *Edmond* that prohibits roadblocks "designed primarily to serve the general interest in crime control," or stated another way, the "ordinary enterprise of crime control," while ignoring other language in the *Edmond* opinion modifying and explaining what is meant by "ordinary crime control." I believe that the majority improperly relies on the first sentence in the above-quoted passage from *Edmond* and disregards the second sentence, which, modifying the first, plainly proscribes checkpoints for the purpose of exposing unknown crimes to the police. *Edmond* should not be read as categorically enjoining police from stopping all vehicles pursuant to an informational roadblock designed to make reasonable inquiry of persons who were possibly witnesses to a specific crime. Instead, I would find that absent either exigent circumstances or a sufficient relationship to highway safety or border concerns, *Edmond* categorically prohibits only checkpoints whose primary purpose lies in discovering that the subjects of the seizure have committed some crime (*Edmond,* 531 U.S. at 43-44, 148 L. Ed. 2d at 345, 121 S. Ct. at 455). Again, the Court in *Edmond* specifically noted that it could not sanction stops "justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that *any given motorist has committed some crime.*" (Emphasis added.) *Edmond,* 531 U.S. at 44, 148 L. Ed. 2d at 345, 121 S. Ct. at 455.

Here, the roadblock at issue had a specific purpose of assisting the authorities in solving a crime that had already been committed and was known to the police. Thus, police efforts were not directed at general crime control within the meaning of *Edmond.* Unlike in *Edmond,* the Lombard police department did not seek to interrogate and inspect motorists to ferret out evidence that the motorists themselves had committed a crime that was as yet unknown to police. The present defendant was subjected to investigation only because his erratic driving nearly resulted in his collision with an officer in the area where vehicles were stopped for purposes of handing out flyers. Once the officers witnessed defendant's erratic driving, they clearly had reasonable suspicion to detain defendant for further inquiry. See *People v. Sorenson,* 196 Ill. 2d 425, 433 (2001); *People v. Brodack,* 296 Ill. App. 3d 71, 74 (1998). As the Court in *Edmond* recognized, its holding was not meant to "impair the ability of police officers to act appropriately upon information that they properly learn during a checkpoint stop justified by a lawful primary purpose, even where such action may result in the arrest of a motorist for an offense unrelated to that purpose." *Edmond,* 531 U.S. at 48, 148 L. Ed. 2d at 347, 121 S. Ct. at 457.

While *Edmond* stated that "[a] search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing" (*Edmond,* 531 U.S. at 37, 148 L. Ed. 2d at 340, 121 S. Ct. at 451), it did not create a *per se* rule announcing that henceforward only roadblocks involving DUI checkpoints or border control would ever be considered constitutional. Instead, *Edmond* discussed with approval the rationale of *Prouse,* which involved a license check. The Court noted that the spot check in that case was invalid because of a lack of standards to guide the discretion of the patrolling officer. *Edmond,* 531 U.S. at 39, 148 L. Ed. 2d at 342, 121 S. Ct. at 453. As previously noted, the *Edmond* Court approved of the assertion in *Prouse* that the

questioning of all oncoming traffic at roadblock-type stops to ensure that only those qualified to operate a vehicle are permitted to do so would be a lawful means of serving the interest of highway safety, and that it considered the purpose of such a hypothetical roadblock "to be distinct from a general purpose of investigating crime." *Edmond*, 531 U.S. at 39, 148 L. Ed. 2d at 342, 121 S. Ct. at 453.

Aside from the fact that the roadblock in this case was distinct from general crime control because it was not designed to detect through "interrogation and inspection * * * that any given motorist has committed some crime" (*Edmond*, 531 U.S. at 44, 148 L. Ed. 2d at 345, 121 S. Ct. at 455), the purpose of the present roadblock is also distinct from general crime control because of its connection to highway safety just as the hypothetical roadblock in *Prouse* was distinct from general crime control. The canvassing for information about a deadly hit-and-run crime that happened on the roadway would serve the purpose of highway safety in a similar fashion to checking licenses to ensure that only qualified drivers are operating motor vehicles.

The conclusion that *Edmond* does not compel the result reached by the majority here is supported by the recent decision of the Supreme Court of Virginia in *Burns v. Commonwealth*, 261 Va. 307, 541 S.E.2d 872 (2001), which is the only other reported case decided in the aftermath of *Edmond* to assess the validity of a roadblock established with the hope of discovering witnesses to a specific, known crime, as opposed to a roadblock established to discover evidence of crime in general. There, police set up a roadblock at a particular location on September 21-22, 1998, between the hours of 7 p.m. and 11:30 a.m. in the hopes of discovering witnesses to a brutal murder that occurred in a nearby house between the same hours on September 20-21, 1998. According to the sheriff who decided to establish the roadblock, its purpose was to "'canvas drivers who

were passing through the area, to see whether they had seen or heard anything' during the time period when the crime had probably been committed the previous day." *Burns*, 261 Va. at 322, 541 S.E.2d at 883. The sheriff also directed officers to stop all vehicles and to ask the operators if they had been through that section during the time in question and, if they had, whether they had seen anything of a suspicious nature in and around the victim's house. Fortuitously, the defendant, who was a relative of the victim, was stopped and eventually made statements implicating himself in the crime.

In holding that the roadblock did not violate the fourth amendment, the Supreme Court of Virginia first considered and weighed the factors enunciated in *Brown*. *Burns*, 261 Va. at 322, 541 S.E.2d at 883. The court concluded that the murder was a matter of grave public concern and that the roadblock advanced that concern by aiding in the investigation of the crime. *Burns*, 261 Va. at 322, 541 S.E.2d at 883. Furthermore, the court emphasized that the roadblock was carried out pursuant to an explicit plan that contained neutral criteria and limited the discretion and conduct of the law enforcement officers charged with the responsibility of stopping vehicles at the roadblock. *Burns*, 261 Va. at 322, 541 S.E.2d at 883.

The Virginia Supreme Court then distinguished *Edmond*, noting that while the roadblock in the case before it was obviously not related to policing the borders or ensuring highway safety, its purpose was not "simply to investigate ordinary criminal wrongdoing as was the checkpoint in *Edmond*." *Burns*, 261 Va. at 323, 541 S.E.2d at 883. Instead, it noted, the roadblock was "specifically designed to investigate a particular murder that had recently occurred in the area where the roadblock was placed," and police "were not stopping vehicles merely to discover evidence of crimes in general." *Burns*, 261 Va. at 323-24, 541 S.E.2d at

883-84. Finally, the court noted that *Edmond* had recognized that "'there are circumstances that may justify a law enforcement checkpoint where the primary purpose would otherwise, but for some emergency, relate to ordinary crime control.'" *Burns,* 261 Va. at 323, 541 S.E.2d at 883, quoting *Edmond,* 531 U.S. at 44, 148 L. Ed. 2d at 345, 121 S. Ct. at 455. The court concluded that the roadblock fell within the exception recognized by *Edmond* and, therefore, did not contravene the fourth amendment. *Burns,* 261 Va. at 324, 541 S.E.2d at 884.

Similarly, I would find that the roadblock in the present case did not violate fourth amendment principles. At the time police set up the roadblock, the offender remained at large with his identity unknown. Thus, he continued to pose a safety risk to others on the road. Moreover, even if the perpetrator was not an immediate threat, the same exigent circumstances found to exist in *Burns* were present here because police had to move relatively quickly to canvass the area at the appropriate time or risk losing information about the crime. At any rate, the underlying purpose behind the roadblock furthered highway safety because of its potential to solve this particular road crime. Importantly, police did not stop vehicles to discover evidence of crime in general, and the roadblock was appropriately tailored in terms of timing and placement to provide for the most reasonably likely opportunity of discovering further information about the crime. Also like *Burns,* the intrusion on motorists in the present case–they were merely stopped long enough to alert them of the crime and to ask them if they had seen anything–was much less than the intrusion in *Edmond.*

Additionally, I note that the roadblock in the present case was perhaps even more justifiable than the one in *Burns* when comparing the two cases with *Edmond.* Here there was the additional connection to roadway safety in that the

crime was accomplished through the use of an automobile at the same location on the highway where the roadblock was eventually conducted. Under these circumstances, I would hold that a police roadblock does not *per se* violate the fourth amendment proscription against unreasonable searches and seizures where the roadblock is designed to gather information about a specific, known crime that is a matter of grave public concern.

II. Application of the *Brown* Balancing Test

Given my conclusion that *Edmond* does not categorically prohibit the type of roadblock at issue in the present case, I believe that it is incumbent upon this court to assess the validity of the roadblock in relation to the factors noted in *Brown v. Texas,* 443 U.S. 47, 61 L. Ed. 2d 357, 99 S. Ct. 2637 (1979). It is well settled that a vehicle stop at a roadblock or highway checkpoint effectuates a seizure within the meaning of the fourth amendment. *Edmond,* 531 U.S. at 40, 148 L. Ed. 2d at 342, 121 S. Ct. at 453; *People v. Bartley,* 109 Ill. 2d 273, 280 (1985). However, a roadblock where individuals are stopped without probable cause or individualized suspicion is not a *per se* violation of the fourth amendment; the question of whether a roadblock violates the fourth amendment is one of reasonableness, requiring the weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty. *Brown,* 443 U.S. at 50-51, 61 L. Ed. 2d at 361-62, 99 S. Ct. at 2640; *Bartley,* 109 Ill. 2d at 280.

The factors set forth in *Brown* require a court to balance the State's asserted interest for the roadblock against the "objective" and "subjective" intrusion on the motorist. *Prouse,* 440 U.S. at 656, 59 L. Ed. 2d at 669, 99 S. Ct. at 1397; *Martinez-Fuerte,* 428 U.S. at 558, 49 L. Ed. 2d at

1128, 96 S. Ct. at 3083. The objective intrusion is measured by such factors as the length of the stop, the nature of the questioning, and whether a search is conducted; the subjective intrusion relates to the concern, fright, or annoyance on the part of the motorist. *Bartley,* 109 Ill.2d at 282. The crucial inquiry in assessing the subjective intrusion involves a consideration of whether the field officers were acting with unbridled discretion. *Bartley,* 109 Ill.2d at 289. Factors important in that inquiry include the following: (1) whether the decision to establish the roadblock and its location are made by supervisory personnel of the police department such as a lieutenant or captain; (2) whether all vehicles are stopped in a systematic, preestablished manner such as stopping all traffic in a given direction; (3) whether guidelines exist on the operation of the roadblock; (4) whether advance publicity of the intention of police to establish the roadblock was given; and (5) whether a sufficient show of the official nature of the operation was made through such means as the presence of a number of police vehicles with flashing lights and uniformed officers. *Bartley,* 109 Ill. 2d at 288-91.

Application of the *Brown* factors to the instant case leads to the conclusion that the roadblock established by the Lombard police department passed constitutional standards. The department made the decision to set up the roadblock because of a fatal hit-and-run accident that had been committed in the precise area of the roadblock, and officials did not know the identity of the offender responsible for the crime. That the perpetrator was still at large was indeed a matter of grave public concern, and the roadblock advanced that concern by aiding in the investigation of the crime. Moreover, the timing of the roadblock, exactly one week after the crime at approximately the same time of day, was purposely designed to stop motorists who might routinely travel that route at the end of their work shift and thus was narrowly tailored for maximum effectiveness.

Thus, I would find that the State's interest in the roadblock was sufficient to outweigh a minimal intrusion on the motorist.

Additionally, the intrusion in this case was in fact minimal. Objectively, the physical nature of the intrusion was insubstantial. Motorists were detained approximately 10 to 15 seconds, just long enough for police to hand out a flyer and alert motorists of the accident the previous week. Drivers were not asked for their names, driver's licenses, or insurance cards and they were not checked for seat belt violations. In relation to the vehicle occupants subjected to the stop, there was indisputably no crime-detection purpose behind the roadblock.

Likewise, the subjective nature of the intrusion was minimal. The record indicates that a high-ranking lieutenant in the police department called the meeting to inform the officers that they were to participate in the roadblock. Vehicles were stopped in a systematic and preestablished manner–all eastbound traffic was stopped and this was not a roving patrol. Although an officer participating in the roadblock admitted that there were no written guidelines for "informational roadblocks" contained in the department's written guidelines, the department did have guidelines for roadblocks generally, and there is no indication that the officers in the field did not follow the preestablished procedure for this particular roadblock. Although the roadblock itself may not have been publicized in advance, it is clear that the basis for the roadblock had been well-publicized, which would have likely minimized any apprehension motorists may have otherwise experienced upon encountering it. Finally, any anxiety motorists may have felt was dissipated by the official nature of the operation–there was a large number of emergency vehicles present with flashing lights and officers clad in orange police vests.

III. Proliferation of Roadblocks

Lastly, I note that the majority cites statistics of the thousands of felonies that occur in Illinois each year to support its argument that, if this particular roadblock were upheld, roadblocks generally would become a routine way of life. The statistics cited by the majority, however, are irrelevant to this discussion, and the majority's argument based thereon is unfounded and unpersuasive. The majority misses the point that the justification for this particular roadblock was that a fatal hit-and-run accident had occurred on the highway, that the roadblock was also justified by its connection to highway safety, and that it amounted to mere canvassing for information. Missing from the list of statistics cited by the majority is the amount of *fatal* hit-and-run accidents that occur on major thoroughfares like Route 64, the scene of the fatal vehicular crime that lead to the roadblock in this case.

The majority's reasoning is also defused by the reality that the amount of roadblocks would be limited by the scarce public resources available to police. Moreover, even when a police department determines that it is a justifiable use of their limited manpower and resources to set up an informational roadblock, the constitutionality of the roadblock would still be subject to the three-prong reasonableness test of *Brown* as well as the principles set forth in *Edmond*.

IV. Conclusion

For the foregoing reasons, I would reverse the judgment of the appellate court and reinstate defendant's conviction. Accordingly, I respectfully dissent.

JUSTICES FITZGERALD and GARMAN join in this dissent.

[Filed March 30, 2001]

No. 2–99–1288

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	No. 97–DT–3462
v.	)	
	)	Honorable Mark W. Dwyer,
ROBERT S. LIDSTER,	)	Judge, Presiding.
Defendant-Appellant.	)	

JUSTICE McLAREN delivered the opinion of the court:

Following a jury trial, defendant, Robert Lidster, was convicted of driving under the influence of alcohol (625 ILCS 5/11-501(a)(2) (West 1998)). Defendant was arrested after being stopped at an "informational roadblock" conducted by the Lombard police department. He appeals, contending that the trial court erred in denying his motion to quash his arrest and suppress evidence because the roadblock was an unreasonable seizure.

On August 30, 1997, Lombard police set up an "informative stop" on North Avenue, at the location of a hit-and-run accident a week before. The officers intended to stop all eastbound traffic and pass out flyers about the accident, hoping that someone had witnessed the incident and could provide information about the offender or his vehicle.

While conducting the roadblock, Detective Wayne Vasil was standing in the center lane of North Avenue. As each vehicle pulled up, an officer would hand the driver a flyer about the accident. One such vehicle was defendant's Mazda minivan, which almost struck Vasil as defendant approached. At that point, Vasil was not aware that defendant had violated any state law or city ordinance, although he had "some sort of feeling that something might be wrong." Vasil stated that defendant's van had already been stopped pursuant to the roadblock before nearly striking him.

Vasil approached the van to ask defendant why he had almost hit him. During the ensuing conversation, Vasil began to suspect that defendant might be under the influence of alcohol. As a result, he directed defendant to pull onto a side street for field sobriety tests. Another officer conducted the tests and defendant was arrested for driving under the influence of alcohol.

Defendant moved to quash his arrest, arguing that the roadblock was unconstitutional. The trial court denied the motion. Subsequently, a jury found defendant guilty and the court sentenced him to court supervision. After the court denied his posttrial motion, defendant filed a timely notice of appeal.

On appeal, defendant renews his argument that the roadblock was unconstitutional. He contends that, under the balancing test developed by the state and federal courts, the public interest in conducting the roadblock—searching for evidence about a prior crime—did not outweigh the intrusion on the rights of innocent motorists.

A fourth amendment seizure occurs when a vehicle is stopped at a checkpoint. *Michigan Department of State Police v. Sitz*, 496 U.S. 444, 450, 110 L. Ed. 2d 412, 420, 110 S. Ct. 2481, 2485 (1990); *People v. Fullwiley*, 304 Ill. App. 3d 44, 49 (1999). Whether a particular roadblock or similar

device violates the fourth amendment is a question of reasonableness. *People v. Bartley*, 109 Ill. 2d 273, 280 (1985). The test courts have developed to assess the reasonableness of a procedure involves balancing the intrusion on an individual's fourth amendment interests against the program's promotion of legitimate government interests. *Delaware v. Prouse*, 440 U.S. 648, 59 L. Ed. 2d 660, 667-68, 654, 99 S. Ct. 1391, 1396 (1979). This in turn requires the court to weigh the gravity of the public concerns served by the seizure and the degree to which the seizure advances those interests against the severity of the interference with individual liberty. *Brown v. Texas*, 443 U.S. 47, 50-51, 61 L. Ed. 2d 357, 361-62, 99 S. Ct. 2637, 2640 (1979); *Bartley*, 109 Ill. 2d 273, 280.

After the parties filed their briefs, the United States Supreme Court decided *City of Indianapolis v. Edmond*, 531 U.S. ___, 148 L. Ed. 2d 333, 121 S. Ct. 447 (2000). There, citizens sought to enjoin the city's use of roadblocks to search for evidence of drug trafficking. The court found the roadblock program unconstitutional because its sole purpose was to uncover evidence of "ordinary criminal wrongdoing." *Edmond*, 531 U.S. at ___, 148 L. Ed. 2d 343, 121 S. Ct. at 454. Noting that its roadblock cases had recognized only a limited exception to the rule that a seizure must be accompanied by some measure of individualized suspicion, the *Edmond* majority observed that the roadblocks the Court had previously approved were designed to further a compelling purpose such as promoting highway safety by targeting drunk drivers (see *Sitz*, 496 U.S. at 455, 110 L. Ed. 2d at 423, 110 S. Ct. at 2488) or policing the border to stanch the flow of illegal aliens (see *United States v. Martinez-Fuerte*, 428 U.S. 543, 551-52, 49 L. Ed. 2d 1116, 1124-25, 96 S. Ct. 3074, 3080 (1976)). *Edmond*, 531 U.S. at ___, 148 L. Ed. 2d at 341-42, 121 S. Ct. at 452-53. However, the Court declined "to suspend the usual requirement of individualized suspicion where the police seek to employ a

checkpoint primarily for the ordinary enterprise of investigating crimes." *Edmond*, 531 U.S. at ___, 148 L. Ed. 2d at 345, 121 S. Ct. at 455.

Although the roadblock in this case is in some ways different from the one at issue in *Edmond*, it is impossible to escape the conclusion that the roadblock's ostensible purpose was to seek evidence of "ordinary criminal wrongdoing." Vasil testified that the roadblock was set up in the hope of obtaining more information about a driver responsible for killing a bicyclist a week earlier. The police stopped cars near the site of the accident and at about the same time of day the accident occurred in the hope that someone who left work at that time or otherwise traveled that route regularly might have seen the accident. The express purpose of the roadblock was to search for evidence of a crime.

Edmond did leave open the possibility that an "emergency" might justify a checkpoint the purpose of which would ordinarily be considered routine crime control. The Court gave as examples preventing an imminent terrorist attack and catching a dangerous criminal "who is likely to flee by way of a particular route." *Edmond*, 531 U.S. at ___, 148 L. Ed. 2d at 345, 121 S. Ct. at 455. Clearly, no such emergency was present here. The crime in question had occurred a week before. Moreover, the officers did not testify that they expected even to catch the offender; they merely wanted to get a more accurate description of him. This is the type of routine investigative work that the police must do every day and does not justify the extraordinary means chosen to further the investigation.

One apparent concern of the Court in *Edmond* was that, if "the ordinary enterprise of investigating crimes" (*Edmond*, 531 U.S. at ___, 148 L. Ed. 2d at 345, 121 S. Ct. at 455)) could be the basis for a checkpoint, there would be no theoretical limit on when such tactics could be employed and the requirement of individualized suspicion would be

nullified. While the crime under investigation here, involving the death of an innocent person, is undoubtedly serious, equally serious crimes unfortunately happen every day in many jurisdictions. If investigating such a crime could be the basis for a roadblock, police could stop all cars entering or leaving town virtually every day on the chance that someone might have seen something that would aid the investigation.

Such unbridled use of checkpoints also leaves open the possibility of police subterfuge, using the pretense of investigating some infamous crime to stop motorists based on "the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime." *Edmond*, 531 U.S. at ___, 148 L. Ed. 2d at 345, 121 S. Ct. at 455. We note that in this case a second officer was stationed on a side street, apparently to prevent drivers from evading the roadblock. This tends to discredit the explanation that the police were merely seeking information. Presumably, if a motorist were willing to provide information to the police, he or she would not attempt to avoid the roadblock.

The State argues that the public interest in seeing the hit-and-run solved was not insubstantial and that the police took reasonable steps to minimize the intrusion on the motorists' rights. However, assuming for the sake of argument that the police did everything reasonably possible to minimize the intrusion, *Edmond* strongly suggests that a criminal investigation can never be the basis for a roadblock, at least absent some emergency circumstance not present here. Such an interest is simply not sufficiently weighty to counterbalance even a minimal intrusion on the rights of drivers stopped at the checkpoint.

Finally, although not itself dispositive, some mention should be made of the third element of the balancing equation, the degree to which the seizure advances the public

interest. The Supreme Court has required that the facts on which such an intrusion is based must "be capable of measurement against 'an objective standard.'" *Prouse*, 440 U.S. at 654, 59 L. Ed. 2d at 668, 99 S. Ct. at 1396. Generally, the choice among reasonable enforcement alternatives must be left with local governmental officials "'who have a unique understanding of, and a responsibility for, limited public resources.'" *People v. Adams*, 293 Ill. App. 3d 180, 189 (1997), quoting *Sitz*, 496 U.S. at 453-54, 110 L. Ed. 2d at 422, 110 S. Ct. at 2487. However, this does not mean that the courts must "'blindly defer to whatever enforcement techniques are chosen by officials'" because courts must analyze these techniques to ensure that they are, in fact, reasonable in the context of the fourth amendment. *Adams*, 293 Ill. App. 3d at 189-90, quoting *Holt v. State*, 887 S.W.2d 16, 19 (Tex. Crim. App. 1994). Here, the State presented no empirical evidence of the effectiveness of such a checkpoint program. In the absence of evidence to the contrary, it seems likely that more traditional law enforcement techniques would have been just as, if not more, effective than the roadblock without infringing on the constitutional rights of numerous motorists, none of whom was suspected of a crime.

Because the roadblock at which defendant was apprehended did not comply with constitutional standards, the trial court should have granted defendant's motion to quash his arrest and suppress evidence. Absent this evidence, there remains no evidence to support his conviction for driving under the influence of alcohol.

The judgment of the circuit court of Du Page County is reversed.

Reversed.

GEIGER and BOWMAN, JJ., concur.